

**FOR THE EASTERN DISTRICT OF VIRGINIA  
Newport News Division**

**JOANN WRIGHT HAYSBERT,**

**Plaintiff,**

**v.**

**Civil Action No.: 4:24-cv-00087**

**OUTBACK STEAKHOUSE  
OF FLORIDA, LLC, et al.,**

**Defendants.**

**MOTION AND MEMORANDUM IN SUPPORT FOR LEAVE  
TO FILE AMENDED COMPLAINT**

COMES NOW, Plaintiff, JoAnn Wright Haybsert, pro se, and files this Motion for Leave to file the attached proposed Amended Complaint, pursuant to Rule 15(a)(1)(B) and, in the alternative, (a)(2), and in support thereof, provides the following Memorandum in Support, stating as follows:

**MEMORANDUM IN SUPPORT**

1. On December 18, 2023, Dr. Haysbert moved to voluntarily dismiss the earlier action (Haysbert v. Bloomin' Brands, Inc., No. 4:20-cv-00121-EWH-RJK) pursuant to Federal Rule of Civil Procedure 41(a)(2).

2. On June 11, 2024, Plaintiff re-filed the instant matter. The case involves a slip and fall at a Chesapeake Outback (the "Chesapeake Outback") owned and operated by Outback Steakhouse of Florida, LLC.

3. On July 22, 2024, Defendant Outback Steakhouse of Florida, LLC filed an Answer to the Complaint.

4. On July 24, 2024, Defendant Bloomin' Brands, Inc. filed a Motion to Dismiss and Memorandum in Support ("Motion" or "Motion to Dismiss"), under Federal Rule of Civil

Procedure 12(b)(6) on the grounds that Plaintiff's Complaint failed to allege sufficient facts to establish that Bloomin' Brands, Inc. is a proper party to this litigation. See ECF Nos. 7, 8.

5. Bloomin; Brands, Inc. is a proper party to this litigation because they exercised some degree of control over the Chesapeake Outback's operations and premises, including by establishing safety procedures and approving requests for maintenance and repairs.

6. Rule 15(a)(1) of the Federal Rules of Civil Procedures provides that a party may amend its pleading once as a matter of course no later than: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

7. Defendant Bloomin' Brands, Inc. filed a Motion to Dismiss on July 24, 2024. Plaintiff, who is pro se, was served via electronic mail and U.S. Mail. Plaintiff did not consent to service by electronic means, and therefore was served via mail at her last known address pursuant to Rule 5(b)(2)(c) of the Federal Rules of Civil Procedure.

8. Pursuant to Rule 6 of the Federal Rules of Civil Procedure, when "a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a)."

9. Accordingly, the filing of Plaintiff's Amended Complaint should be considered timely under Rule 15(a)(1)(b) of the Federal Rules of Civil Procedure.

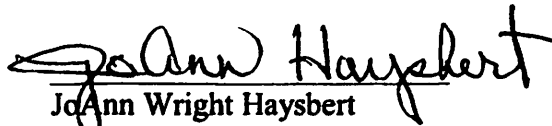
10. However, if the Court considers the filing untimely, Plaintiff moves for leave to file the attached proposed Amended Complaint (attached as Exhibit 1) pursuant to Rule 15(a)(2), which provides that "in all other cases, a party may amend its pleading only with the opposing

party's written consent or the court's leave. *The court should freely give leave when justice so requires.*" Fed. R. C. Pr. 15(a)(2) (emphasis added).

11. Further, in granting Plaintiff's motion for voluntary dismissal in the earlier proceeding, the Court imposed multiple conditions, including that "if the case is refiled, it will be procedurally in the same position as the instant case." See ECF No. 357 at 2. As such, Bloomin' Brands should remain a party to the instant case, and Plaintiff's Amended Complaint outlines the legal basis for their inclusion.

WHEREFORE, Plaintiff, Joann Wright Haysbert, respectfully requests that this Court grant her leave to file the proposed attached Amended Complaint (Exhibit 1), lodge the same on the Court's docket, require Defendants to file Answers to the Amended Complaint within such time period as the Court considers just, and for such further relief as the Court determines necessary.

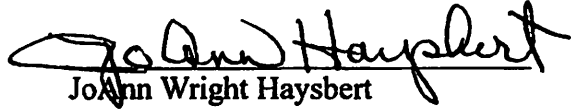
DATED: August 13, 2024

  
JoAnn Wright Haysbert  
Plaintiff pro se  
244 William R. Harvey Way  
Hampton, VA 23669  
Tel: (757) 913-9114

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13 day of August 2024, I will file the foregoing with the Clerk of Court and send a copy of the foregoing via U.S. Mail to the following:

John D. McGavin, Esq.  
MCGAVIN, BOYCE, BARDOT, THORSEN & KATZ, P.C.  
9990 Fairfax Boulevard, Suite 400  
Fairfax, Virginia 22030

  
JoAnn Wright Haysbert

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Newport News DIVISION

JOANN WRIGHT HAYSBERT

Plaintiff(s),

v.

Civil Action Number: 4:24-cv-00087

OUTBACK STEAKHOUSE OF FLORIDA, LLC

Defendant(s),

LOCAL RULE 83.1 (N) CERTIFICATION

I declare under penalty of perjury that:

No attorney has prepared or assisted in the preparation of \_\_\_\_\_.  
(Title of Document)

\_\_\_\_\_  
Name of *Pro Se* Party (Print or Type)

\_\_\_\_\_  
Signature of *Pro Se* Party

Executed on: \_\_\_\_\_ (Date)

OR

The following attorney(s) prepared or assisted me in preparation of PLAINTIFF'S RESPONSE TO DEFENDANT  
BLOOMIN' BRANDS, INC.'S MOTION TO DISMISS.  
(Title of Document)

Mary T. Morgan

\_\_\_\_\_  
(Name of Attorney)

4646 Princess Anne Road, Unit 104, Virginia Beach, VA 23462

\_\_\_\_\_  
(Address of Attorney)

(757) 609-2702

\_\_\_\_\_  
(Telephone Number of Attorney)

Prepared, or assisted in the preparation of, this document.

JoAnn Wright Haysbert

\_\_\_\_\_  
(Name of *Pro Se* Party (Print or Type)

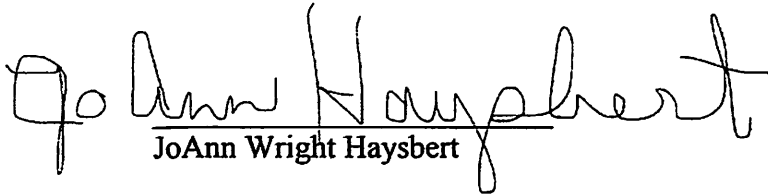
JoAnn Wright Haysbert  
Signature of *Pro Se* Party

Executed on: August 13, 2024 (Date)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing PLAINTIFF'S RESPONSE  
TO DEFENDANT BLOOMIN' BRANDS, INC.'S MOTION TO DISMISS was mailed  
this 13 day of August to:

John D. McGavin  
McGavin, Boyce, Bardot, Thorsen & Katz, P.C.  
9990 Fairfax Boulevard, Suite 400  
Fairfax, Virginia 22030  
*Counsel for Defendants*

  
JoAnn Wright Haysbert